STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 23, 2014
v	No. 318370 Wayne Circuit Court
BILLY BINGHAM, Defendant-Appellant.	LC No. 13-004408-FC

Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Defendant, Billy Bingham, appeals as of right his jury trial convictions of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a) (victim under 13 years of age). Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 40 to 80 years' imprisonment for each conviction. We affirm.

Defendant argues that the trial court abused its discretion in denying his request for substitute counsel. We disagree.

Approximately one week before trial, in a letter dated August 13, 2013, defendant informed the trial court, "I am having problems with my state[-]appointed attorney." Defendant explained that his trial counsel advised him to accept a guilty plea, pursuant to which defendant would receive a minimum sentence of 18 ½ years imprisonment. According to the letter, defense counsel told defendant, " 'I have no Defense for you.' " The letter also added, "to make matter[s] worse [counsel] has yet to contact any of my witnesses, character or otherwise. He also has not submitted any paper on the DNA that was signed by you during my examination." The letter concluded by requesting substitute appointed counsel.

The trial court forwarded the letter to the prosecution's office and held a hearing on August 16, 2013, to discuss the letter with defense counsel. At the hearing, defense counsel informed the trial court, "I do understand my client would like to have a different attorney. I frankly don't think it will make a lot of difference." This prompted the following exchange between defense counsel and the trial court:

> THE COURT. Well, it probably won't [make a difference to have substitute counsel.] But do you want to stay in or do you want to get out?

[DEFENSE COUNSEL]. I don't have a whole lot of feelings about it one way or the other, your Honor.

THE COURT. Okay.

[DEFENSE COUNSEL]. I do want to say that I have visited my client in the jail on several occasions. We have gone over the DNA results. And, frankly, I don't have any way of countering—

THE COURT. Okay, we'll find somebody to try this case by the 21st [of August]. We're going to let you out.

Thereafter, the trial court announced that although it would appoint substitute counsel, it would not grant an adjournment, explaining: "See, that's what they do over in the jail, they figure out how to get an adjournment. We're not going to adjourn this case."

Following a brief off-the-record conference, the trial court informed defense counsel that he was not dismissed and that defendant would not receive substitute counsel. The court explained that substitute counsel could not be procured in time for trial, so defense counsel would have to remain as defendant's trial counsel.

This Court reviews a trial court's decision regarding a defendant's request for substitute counsel for an abuse of discretion. *People v Strickland*, 293 Mich App 393, 397; 810 NW2d 660 (2011). " 'A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes.' " *Id.*, quoting *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008).

A defendant has the right to counsel under the Sixth Amendment of the United States Constitution. *People v Buie (On Remand)*, 298 Mich App 50, 67; 825 NW2d 361 (2012), citing *People v Russell*, 471 Mich 182, 187; 684 NW2d 745 (2004). However, a defendant does not have the automatic right to request appointed counsel of his choice. *Id.* "Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process." *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).

"Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic." *Id.* This can include an assertion by a defendant that the attorney is " 'inadequate, lacking in diligence, or disinterested in [the] case.' " *Buie (On Remand)*, 298 Mich App at 68, quoting *People v Meyers*, 124 Mich App 148, 166; 335 NW2d 189 (1983). This also includes a breakdown in the relationship between the defendant and his trial counsel with regard to "whether a particular line of defense should be pursued" or a legitimate difference in opinion with regard to a fundamental trial tactic. *Id.* (citation and quotation omitted). See also *Strickland*, 293 Mich App at 397. "A mere allegation that a defendant lacks confidence in his or her attorney, unsupported by a substantial reason, does not amount to adequate cause." *Id.* at 398. "Likewise, a defendant's general unhappiness with counsel's representation is insufficient." *Id.* In addition, a disagreement between a defendant and his trial counsel with regard to trial strategy, including what evidence to present, is not good cause for substitution of counsel. *Id.*

When a defendant contends that his assigned counsel is not adequate or diligent, the trial court should hear the claim. *Id.* at 397. If there is a factual dispute, the trial court must hear testimony, make findings of fact, and come to a conclusion on the record. *Id*. However, "[a] judge's failure to explore a defendant's claim that his assigned lawyer should be replaced does not necessarily require that a conviction following such error be set aside." *People v Ginther*, 390 Mich 436, 442; 212 NW2d 922 (1973). See also *Buie (On Remand)*, 298 Mich App at 67, quoting *Ginther*, 390 Mich at 442 (explaining that, "even in the absence of judicial consideration of the defendant's allegation" a defendant's conviction should not be set aside "if 'the the record does not show that the lawyer assigned to represent [the defendant] was in fact inattentive to his [or her] responsibilities.' ").

We disagree with defendant's assertion that there was good cause for appointing substitute counsel in this case. Defendant alleged that he was "having problems" with defense counsel and that defense counsel informed him, "I have no defense for you." Such allegations were mere general allegations of dissatisfaction with trial counsel's performance and do not amount to good cause. See *Strickland*, 293 Mich App at 398 (explaining that "a defendant's general unhappiness with counsel's representation is insufficient."). Although defendant claims that counsel wholly abandoned his responsibilities by advising defendant to enter a guilty plea and by informing him, "I have no defense for you," an attorney is required to explain the realities of a case to the defendant. See MRPC 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."). See also *People v Corteway*, 212 Mich App 442, 446; 538 NW2d 60 (1995) (explaining that trial counsel is required to inform the defendant about a guilty plea and that counsel may make a specific recommendation about whether to plead guilty or proceed to trial). That defendant did not like what defense counsel had to say does not mean that defendant established good cause. Moreover, the record reveals that trial counsel did not wholly abandon his responsibilities to defendant. Trial counsel met with defendant to discuss the defense and called an expert witness in an attempt to rebut the prosecution's DNA evidence, which was the most damaging evidence presented against defendant. Even after the trial court briefly removed trial counsel, trial counsel nevertheless attempted to make arrangements in order to secure the expert's presence at trial. On the whole, the record does not support defendant's assertion that trial counsel was disinterested or that counsel gave up on the defense.

Likewise, defendant's assertion that counsel failed to investigate certain unnamed witnesses, including unnamed character witnesses, cannot demonstrate good cause. Generally, "[d]ecisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy." *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). As we explained in *Strickland*, 293 Mich App at 398: "[c]ounsel's decisions about defense strategy, including what evidence to present and what arguments to make, are matters of trial strategy, and disagreements with regard to trial strategy or professional judgment do not warrant appointment of substitute counsel." Here, defendant alleged a disagreement with regard to strategy that did not amount to good cause for the appointment of substitute counsel. The record does not contain evidence that defendant demonstrated a legitimate difference of opinion with regard to a fundamental trial tactic or a complete breakdown in communication between defendant and defense counsel. See *id.* Further, it is significant to note that defendant did not identify the unnamed witnesses in his letter, nor does he present any indication on appeal pertaining to the identity of these witnesses or how they could refute the evidence in this case,

which included DNA evidence linking defendant to the sexual assaults. Defendant's vague allegations, which lack any specificity, will not suffice. *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001) ("Defendant may not leave it to this Court to search for a factual basis to sustain or reject his position."). Additionally, defendant has not alleged that counsel was ineffective in this regard, nor has defendant moved this Court to remand for an evidentiary hearing concerning these unnamed witnesses. The nature of defendant's vague allegations make this case distinguishable from our Supreme Court's decision *People v Williams*, 386 Mich 565, 576-578; 194 NW2d 337 (1972), to which defendant cites, where defense counsel's failure to call certain alibi witnesses was deemed to amount to good cause. By contrast to the defendant in *Williams*, defendant in the instant case has given no indication of the identity of his unknown witnesses, nor has he provided any indication of testimony that those unknown witnesses allegedly would have provided. As such, although the trial court did not articulate the foregoing as its reasoning for denying defendant's request for substitute counsel, we find the trial court's ultimate decision to deny the appointment of substitute counsel was not an abuse of discretion. *Strickland*, 293 Mich App at 397; *People v McLaughlin*, 258 Mich App 635, 652 n 7; 672 NW2d 860 (2003) ("[T]his Court will not reverse a trial court's order if it reached the right result for the wrong reason.").[1]

Defendant argues that the trial court abused its discretion when it denied his request without allowing him the opportunity to be heard on the record and without further inquiry into the issue of good cause. In *Strickland*, 293 Mich App at 397, this Court held that the trial court had properly inquired into the defendant's claim. This Court reasoned that the trial court was aware of the defendant's complaints because it received a copy of the defendant's grievances against his trial counsel and allowed the defendant to "say whatever he wants to say" with regard to trial counsel's deficiencies. *Id.* The trial court in this case similarly accepted a copy of defendant's letter detailing his grievances against trial counsel. The trial court gave the prosecution a copy of the letter. Defendant did not speak on the record. Although the trial court did not specifically provide defendant with the opportunity to speak on the record, the trial court was nevertheless aware of defendant's grievances against trial counsel.[2] See *id*. Furthermore, the trial court was not required to conduct a factual inquiry on the record because there is no indication that defendant's factual assertions were disputed. See *id*. And, even if the trial court erred in failing to further explore defendant's claim by taking testimony, the error was harmless because there was not good cause to appoint substitute counsel. See *Ginther*, 390 Mich at 442 ("A judge's failure to explore a defendant's claim that his assigned lawyer should be replaced

[1] Defendant contends that the trial court initially found good cause to replace trial counsel, but changed course and denied defendant's request. This assertion is not supported by the record. Although the trial court initially agreed to appoint substitute counsel, the record does not reveal that the trial court made the requisite finding of good cause. Rather, the trial court simply decided to appoint substitute counsel. And, as discussed above, there was not good cause for appointing substitute counsel in this case.

[2] In reaching this conclusion, we note that defendant on appeal does not attempt to expand upon the allegations raised in the letter.

does not necessarily require that a conviction following such error be set aside."); *Buie (On Remand)*, 298 Mich App at 67.

Because we find that the trial court's decision to deny substitute counsel was not an abuse of discretion based on a lack of good cause, we need not address defendant's contention that the trial court's analysis was erroneous with regard to whether appointing substitute counsel would disrupt the judicial process. See *Buie (On Remand)*, 298 Mich App at 67 (explaining that a defendant is only entitled to substitute counsel "when discharge of the first attorney is for 'good cause' *and* does not disrupt the judicial process."). (Citation and quotation omitted; emphasis added).

Affirmed.

/s/ Michael J. Riordan
/s/ Jane M. Beckering
/s/ Mark T. Boonstra